

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

JASON DUNKELBERGER, Plaintiff, vs. DARIN YOUNG, WARDEN; AND THE ATTORNEY GENERAL OF THE STATE OF SOUTH DAKOTA, Defendants.	4:20-CV-04117-RAL ORDER DIRECTING PAYMENT OF \$5 FEE AND THEREAFTER DIRECTING SERVICE AND REQUIRING RESPONSE
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Plaintiff Jason Dunkelberger filed a petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus. Doc. 1. Dunkelberger has not paid the \$5.00 filing fee, but moves for leave to proceed without prepayment of fees. Doc. 2. Dunkelberger's prisoner trust account report shows average monthly deposits for the past six months of \$149.75, and an average monthly balance for the past six months of \$18.59. Doc. 4. Accordingly, the Court finds that Dunkelberger is indigent and grants his motion for leave to proceed in forma pauperis. However, Dunkelberger has the financial wherewithal to pay the \$5 filing fee. Once Dunkelberger pays that fee, service on Defendants may occur without Dunkelberger having to pay a process server.

This Court is to screen § 2254 petitions and dismiss when it "plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court" under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Court. Dunkelberger's petition makes this Court wonder whether he has fully exhausted his claims in state court. However, from a reading of the petition itself, this Court cannot determine with

confidence that it "plainly appears" that Dunkelberger is not entitled to any relief here, although ultimately that may be the case.

Therefore, it is hereby

ORDERED that Dunkelberger's motion to proceed without prepayment of fees, Doc. 2, is granted but he must pay the filing fee of \$5 to the Clerk of Court within the next 21 calendar days as he has the financial capability to do so. If he fails to pay the \$5 filing fee within 21 calendar days, this case may be dismissed without prejudice to re-filing. It is further

ORDERED that the Clerk of Court, upon receipt of the \$5 filing fee, arrange to serve a copy of all pleadings of record and this Order on Warden Darren Young and the Attorney General of the State of South Dakota. It is further

ORDERED that the Defendants file an answer, and if they so choose, a motion to dismiss and memorandum, within thirty days of service of the pleadings.

DATED September 9th, 2020.

BY THE COURT:



ROBERTO A. LANGE
CHIEF JUDGE